WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 18-08-2005

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM

AND

THE HONOURABLE MR.JUSTICE AR.RAMALINGAM

CONTEMPT APPEAL No.9 OF 2003

1.D.Geetha 2.Swamidurai	....	Appellants (Respondents).
	-vs-	
D.Thulsasi Ammal	....	Respondent (Petitioner).

Appeal under Section 19 (1) of the Contempt of Courts Act against the order of the Honourable Mr.Justice P. Sathasivam, dated 17.07.2003, made in Contempt Petition No.183 of 2003 on the file of this Court, presented under Section 10 and 12 of the Contempt of Courts Act to punish the respondents for having committed Contempt of Court disobeying the Order of this Court dated 24.01.2003 in CRP.No.2112 of 2002 [OS.No.5798/2002 on the file of the City Civil Court, XV Assistant Judge, Madras].

For appellants : Mr.AR.L.Sundaresan

For respondent : Mr.Mohan,
assisted by Mr.V.T.Balaji

J U D G M E N T

M.KARPAGAVINAYAGAM,J.

In a Contempt Petition filed by D.Thulasi Ammal, mother, a learned single Judge of this Court found D.Geetha, daughter, guilty of contempt for having disobeyed the order of the learned single Judge, dated 24.01.2003, and sentenced her to pay a fine of Rs.1,000/-; in default, to undergo simple imprisonment for a period of two weeks. Hence, D.Geetha, daughter, along with her husband Swamidurai, has filed this appeal, challenging the order of the learned single Judge.

2. The brief facts are as follows :

" (a) D.Geetha, first appellant, is the daughter of D.Thulasi Ammal, respondent herein. She filed a suit in O.S.No.6155 of 2001 on the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

file of XV Assistant Judge, City Civil Court, Chennai, for declaration and injunction in respect of the suit property. She also filed I.A.No.18148 of 2001 for temporary injunction against her mother.

(b) As a counter blast, Thulasi Ammal, filed another suit in O.S.No.5798 of 2002 on the file of the XV Assistant Judge, City Civil Court, Chennai. Both the suits were directed to be tried together. Mother/respondent herein also filed I.A.No.18422 of 2002 in the suit O.S.No.5798 of 2002 for interim injunction and the same was granted on 18.11.2002. The application for temporary injunction filed by the daughter in I.A.No.18148 of 2001 in O.S.No.6155 of 2001 was dismissed on 19.11.2002. Though interim injunction was granted on 18.11.2002 in favour of the mother in O.S.No.5798 of 2002, the same was not extended in the next hearing i.e., on 26.11.2002, as the mandatory procedures with reference to the service of summons and payment of batta had not been complied with. Against the non-extension of the order, mother filed C.R.P.No.2112 of 2002 on the file of this High Court and a learned single Judge of this Court, by the order dated 24.01.2003 in C.R.P.No.2112 of 2002, extended the interim injunction, passed by the trial Court on 18.11.2002, and directed the trial Court to hear the parties and finally dispose of the I.A.No.18422 of 2002. In the meantime, daughter/plaintiff in the other suit, namely, O.S.No.6155 of 2001, as against the order dismissing the injunction application in I.A.No.18148 of 2001, dated 19.11.2002, filed C.M.A.No.11 of 2003 on the file of III Additional Judge, City Civil Court, Chennai.

(c) When the C.M.A.was admitted on 31.01.2003 by the III Additional Judge, City Civil Court, Chennai, the fact that the High Court passed an order in C.R.P.No.2112 of 2002, dated 24.01.2003, granting injunction in favour of mother in respect of the suit property was not brought to the notice. However, when the C.M.A. was taken up for final disposal on service of notice on the other side, counsel for the mother, respondent in C.M.A., brought to the notice of the III Additional Judge that already an order was passed by the High Court in C.R.P.No.2112 of 2002 on 24.01.2003 extending the injunction granted in favour of the mother and, as such, the daughter, in respect of the same property, would not be entitled to the injunction in the other suit, filed by her. In spite of that, the learned III Additional Judge, by an order dated 05.03.2003, overruled the objection raised by the learned counsel for the mother and, disregarding the order of the High Court dated 24.01.2003, granted injunction in favour of the daughter, in respect of the same property.

(d) Hence, the mother filed a Contempt Petition on the file of this Court against her daughter and her husband, for having filed injunction application in C.M.A. and seeking for injunction, thereby disobeying the order of injunction passed by the High Court on 24.01.2003. The learned single Judge, after hearing the parties and perusing the records, found the daughter guilty of contempt and imposed fine as stated above."

3. Challenging the said finding, Mr.AR.L.Sundaresan, learned counsel for the daughter/appellants, would submit that the right of the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

daughter in challenging the order of dismissal in injunction application dated 19.11.2002 in her suit by pursuing her remedy through C.M.A cannot be prevented and, as such, she cannot be held guilty of contempt.

4. In justification of the order impugned of the learned single Judge, Mr.Mohan, learned counsel appearing for the mother/respondent, would submit that the learned single Judge has given proper reasonings for holding the first appellant guilty and, therefore, the act of the appellant, in having gone to the III Additional Judge, City Civil Court, Chennai, and obtained an order of injunction, which is a counter to the injunction already granted by the High Court, would amount to contempt and, as such, the order of the learned single Judge is perfectly valid. He would further submit that when there is an order by the High Court in C.R.P.No.2112 of 2002 on 24.01.2003 with regard to the same parties and same properties, it is totally wrong and an error committed by the learned III Additional Judge in sitting over an appeal on the order passed by the High Court and, hence, the III Additional Judge has exceeded the jurisdiction in interpreting the orders, passed by the High Court.

5. We have carefully considered the submissions made by the learned counsel for the parties and also gone through the records and the order impugned, passed by the learned single Judge, dated 17.07.2003.

6. There is no dispute in the fact that both daughter and mother have filed separate suits in O.S.No.6155 of 2001 and 5798 of 2002 in respect of the same property. Though the trial Judge had originally passed an order of injunction in favour of mother in I.A.No.18422 of 2002 on 18.11.2002, he did not extend the injunction, in view of the fact that Order 39 Rule 3 CPC was not complied with. The trial Court also dismissed the injunction application filed by the daughter in I.A.No.18148 of 2001 in O.S.No.6155 of 2001, by the order dated 19.11.2002.

7. It is also not debated that the order, not extending the injunction in favour of the mother, was challenged by the mother in C.R.P.No.2112 of 2002 and, after hearing both sides, this Court, by the order dated 24.01.2003, extended the interim injunction in favour of the mother, restraining the daughter and her husband from disturbing the possession of the mother in respect of the suit property till the disposal of the I.A.No.18422 of 2002 in O.S.No.5798 of 2002, filed by the mother. Admittedly, as stated above, this order was passed only after hearing both the parties. Having known about this order, the daughter, against the order dismissing the injunction application in I.A.No.18148 of 2001 in O.S.No.6155 of 2001, had chosen to file C.M.A.No.11 of 2003. On the date of admission i.e., on 31.01.2003, the order of injunction granted by the High Court was not brought to the notice of the III Additional Judge, City Civil Court, Chennai. Therefore, the C.M.A. was entertained and injunction was granted on 05.03.2003. Thus, it is clear that there was a suppression of the order of injunction passed by the High Court in respect of the same property.

8. But, the unfortunate thing to be noticed is, when the mother, other side in the said C.M.A., contested the C.M.A. mainly on the ground that already there was injunction in her favour passed by the High Court

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

on 24.01.2003, the learned III Additional Judge, ignoring the injunction order passed by the High Court and knowing fully well that the properties and the parties are one and the same, allowed the appeal, granting an order of injunction in favour of the daughter. Thus, it is clear that the order of the III Additional Judge, dated 05.03.2003, in C.M.A.No.11 of 2003 is a counter injunction to the order of the learned single Judge of this Court, dated 24.01.2003, in C.R.P.No.2112 of 2002.

9. The daughter, contemner, having known about the order of the High Court, insisted on the injunction, by making a representation through her lawyer to the extent of advancing argument that the order of the learned single Judge of this Court was not a reasoned order and, therefore, that could be ignored.

10. As correctly pointed out by the learned single Judge, this is nothing but a contempt. Though it is stated by the contemner that the right of filing appeal against the order in dismissing her application for injunction in the suit, cannot be prevented, it is to be noticed that asking for injunction in her favour in C.M.A. would amount to praying the III Additional Judge, City Civil Court, Chennai, who is a subordinate to the High Court, to pass an order of injunction in her favour, which would nullify the effect of the injunction order, granted in favour of her mother by the High Court. So, on these reasonings, the learned single Judge correctly concluded that the daughter/first appellant herein committed contempt of the order passed by this Court on 24.01.2003, by obtaining an order of injunction, which runs counter to the injunction granted by the High Court.

11. During the pendency of the appeal, it was brought to the notice of this Court by the learned counsel for the respondent that the very fact that the III Additional Judge, City Civil Court, Chennai, had gone to the extent of granting injunction, by exceeding his jurisdiction in interpreting the orders of this Court dated 24.01.2003, would indicate that the III Additional Judge also committed a serious misconduct, which would amount to insubordination and contempt. We find force in this submission.

12. Therefore, this Court directed the III Additional Judge, City Civil Court, Chennai, to give explanation with reference to the above, to enable this Court to take further action for contempt or insubordination. Accordingly, this Court received the explanation from him, in which the learned Judge stated that since there was no order of stay in disposing of the C.M.A.No.11 of 2003 in the order dated 24.01.2003 made in C.R.P.No.2112 of 2002, he disposed of the appeal on merits. Whether this explanation is satisfactory or not, it would be better to deal with it in separate proceedings.

13. As far as this case is concerned, the act of the daughter, first appellant herein, in approaching the III Additional Judge and insisting for the interim injunction and obtaining the same, which would run counter to the injunction granted by the High Court, by mentioning that the order of the High Court was not passed properly by giving proper reasons, would, in our view, amount to contempt of the order passed by the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

learned single Judge of this Court.

14. The learned single Judge, in his order, while referring to the order passed by the III Additional Judge, City Civil Court, Chennai, has observed that the procedure adopted and the action of the III Additional Judge in allowing the appeal and granting injunction knowing well that it would run counter to the order of this Court dated 24.01.2003, are to be deprecated. However, he did not choose to pursue the action against the Judge concerned, though he held that seeking for injunction and granting of the same, which would run counter to the injunction granted by the High Court, would amount to misconduct.

15. While confirming the finding of the learned single Judge, we sincerely feel that we should not keep quiet when a subordinate Judge has simply ignored the order of the High Court and passed an order in favour of one party, which would nullify the effect of the order passed by the High Court. Therefore, we intend to initiate separate proceedings against the officer concerned.

16. In our view, the reasons given by the learned single Judge for finding the daughter/first appellant herein are perfectly justified. Hence, this Contempt Appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit

To
1. The Registrar,
City Civil Court,
Madras.

2. The Sub Assistant Registrar,
Original Side,
High Court, Madras.

3. The Section Officer,
Contempt Section,
High Court, Madras.

+ 1 CC to Mr. ARL.L.Sundaresan, Advocate SR NO 34873

CONT.APPEAL No.9 OF 2003

18-08-2005

ps(co)
gp/31.8.

https://hcservices.ecourts.gov.in/hcservices/